

USE OF PAYMENTS UNDER SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 FOR NONCOAL RECLAMATION PROJECTS AND ACID MINE REMEDIATION

APRIL 16, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany S. 897]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (S. 897) to amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects and acid mine remediation programs, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 897 is to amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects and acid mine remediation programs.

BACKGROUND AND NEED FOR LEGISLATION

S. 897 seeks to clarify a provision of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) that in the past has allowed uncertified states and tribes to use certain payments from the Abandoned Mine Land (AML) fund for high priority non-coal reclamation projects. High priority coal and non-coal AML sites are those that pose a serious threat to human health and safety. Problems with the provision arose after passage of the 2006 amendments to SMCRA through a Department of the Interior (DOI) Solicitor's Opinion and the Office of Surface Mining's (OSM) final rule issued for the 2006 amendments. DOI argued that because funds for the "prior balance replacement" funds were paid out of the gen-

eral fund of the U.S. Treasury and not the AML trust fund, the funds were not eligible to be used for non-coal AML projects.

As further explained by the author of the measure, Senator Jeff Bingaman (D–NM) (on identical legislation introduced in the 111th Congress):

[This bill is] important to public health and safety and the environment in the West. This legislation addresses a recent interpretation by the Department of the Interior, DOI, which restricts the ability of states to use certain funds under the Abandoned Mine Land (AML) Program authorized by SMCRA, for non-coal mine reclamation.

The Tax Relief and Health Care Act of 2006 contained amendments to SMCRA reauthorizing collection of an AML fee on coal produced in the U.S. and making certain modifications to the AML program. Under this program, which is administered by DOI, funds are expended to reclaim abandoned mine lands, with top priority for protecting public health, safety, general welfare, and property and restoration of land and water resources adversely affected by past mining practices. The program is largely directed to abandoned coal mine reclamation, but under section 409 of SMCRA, limited funds have been available to address non-coal mine sites.

Unfortunately, the Department of the Interior has interpreted the amendments in a manner that limits the ability of western states to use certain funds under SMCRA to address significant problems relating to non-coal abandoned mines, despite the fact that these funds had previously been available for these purposes.

Section 409 of SMCRA, provides that states may address public health and safety hazards at abandoned mine sites, both coal and non-coal. Western states such as New Mexico, Colorado, and Utah, have prioritized the use of AML funds to undertake the most pressing reclamation work on both coal and non-coal mine sites. While activities on non-coal sites have consumed a relatively insignificant portion of the funding provided for the overall AML program, the results in terms of public health and safety in these states is considerable, and there is significant work yet to be done. For example, New Mexico alone has over 15,000 remaining mine openings with a vast majority of these being non-coal. All AML-related fatalities in the State in the last few decades have been at non-coal mine sites.

I disagree with this interpretation by DOI. This result was not the intention of those of us working on the SMCRA amendments, and I believe the interpretation is in error. First, OSM's interpretation disregards the fact that section 409 was left un-amended by the Congress. Furthermore, this interpretation is inconsistent with assurances repeatedly given to us by OSM during the consideration of the legislation that non-coal work could continue to be undertaken with these AML funds. Finally, the interpretation has the unacceptable result of requiring states to devote funds to low priority coal sites while leaving dangerous non-coal sites unaddressed.

S. 897 corrects the problem created by DOI by modifying the language of SMCRA to clarify that funding would be available for non-coal reclamation as it was prior to the passage of the 2006 amendments. Under the proposed legislation, western, non-certified States could continue to use the payments from their “prior balance replacement” funds (previously un-appropriated state share balances) for non-coal reclamation.

COMMITTEE ACTION

S. 897 was introduced on May 5, 2011, by Senator Jeff Bingaman (D–NM). On November 2, 2011, the bill passed the Senate by unanimous consent. The bill was then referred to the House Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. On February 17, 2011, the Subcommittee held a hearing on the House companion bill, H.R. 785, sponsored by Congressman Stevan Pearce (R–NM). On February 29, 2012, the Full Natural Resources Committee met to consider S. 897. The Subcommittee on Energy and Mineral Resources was discharged by unanimous consent. Congressman Edward Markey (D–MA) offered amendment designated .003 to the bill; the amendment was not adopted by a bipartisan roll call vote of 14 to 30, as follows:

Committee on Natural Resources

U.S. House of Representatives

112th Congress

Date: February 29, 2012

Recorded Vote #: 10

Meeting on / Amendment: **S. 897 – An amendment offered by Mr. Markey.**003 was NOT AGREED TO by a roll call vote of 14 yeas and 30 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman		X		<i>Mr. Heinrich, NM</i>			
<i>Mr. Markey, MA Ranking</i>	X			Mr. Benishek, MI		X	
Mr. Young, AK				<i>Mr. Lujan, NM</i>		X	
<i>Mr. Kildee, MI</i>				Mr. Rivera, FL		X	
Mr. Duncan of TN		X		<i>Mr. Sarbanes, MD</i>	X		
<i>Mr. Defazio, OR</i>		X		Mr. Duncan of SC		X	
Mr. Gohmert, TX				<i>Ms. Sutton, OH</i>	X		
<i>Mr. Faleomavaega, AS</i>	X			Mr. Tipton, CO		X	
Mr. Bishop, UT		X		<i>Ms. Tsongas, MA</i>	X		
<i>Mr. Pallone, NJ</i>	X			Mr. Gosar, AZ		X	
Mr. Lamborn, CO		X		<i>Mr. Pierluisi, PR</i>	X		
<i>Mrs. Napolitano, CA</i>	X			Mr. Labrador, ID		X	
Mr. Wittman, VA		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mr. Holt, NJ</i>	X			Ms. Noem, SD		X	
Mr. Broun, GA		X		<i>Ms. Hanabusa, HI</i>	X		
<i>Mr. Grijalva, AZ</i>	X			Mr. Southerland, FL		X	
Mr. Fleming, LA		X		<i>Mr. Tonko, NY</i>	X		
<i>Ms. Bordallo, GU</i>	X			Mr. Flores, TX		X	
Mr. Coffman, CO		X		Mr. Harris, MD		X	
<i>Mr. Costa, CA</i>		X		Mr. Landry, LA		X	
Mr. McClintock, CA		X		Mr. Runyan, NJ		X	
<i>Mr. Boren, OK</i>		X		Mr. Johnson, OH		X	
Mr. Thompson, PA		X		Mr. Amodei, NV		X	
<i>Mr. Sablan, CNMI</i>		X					
Mr. Denham, CA		X					
				TOTALS	14	30	

The bill was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

S. 897—An act to amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified states and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects and acid mine remediation programs

CBO estimates that enacting S. 897 would have no significant net impact on the federal budget over the 2012–2022 period. Because enacting S. 897 could affect direct spending (increasing it in some years and decreasing it in others), pay-as-you-go procedures apply. Enacting S. 897 would not affect revenues. S. 897 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Each year, the Office of Surface Mining (OSM) provides more than \$300 million in grants and payments to states and Indian tribes to reclaim land and water resources that have been degraded by past mining activities. Because such grants and payments are not subject to annual appropriations, they are considered direct spending. States and tribes that currently have backlogs of coal reclamation projects—so-called uncertified states—are obligated under current law to use a portion of those grants exclusively for certain coal projects.

S. 897 would allow uncertified states and tribes to use those funds for other types of reclamation projects not related to coal mining. CBO expects that this change would increase direct spending—by up to \$2 million a year—in the near term by accelerating spending of reclamation grants. However, that short-term increase would be offset by reduced spending in later years. On balance, CBO expects that implementing the legislation would result in no net change in direct spending over the 2012–2022 period.

Under current law, once states and tribes certify that they have completed all outstanding coal reclamation projects, they become eligible for additional payments from OSM. Under S. 897, some states and tribes may substitute noncoal projects for coal projects in the near term and delay their certification status, which would delay certain payments that would increase direct spending under current law. Based on information from OSM and some of the affected states and tribes, CBO expects that no uncertified states will become certified over the next 10 years, and CBO estimates that any delay in making payments to states that become certified would not affect direct spending over the 2012–2022 period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. S. 897 would have no net effect on direct spending over the 2012–2022 period. The bill would increase direct spending from certain payments to states and tribes to reclaim abandoned mines in the near term, but those increases would be offset by decreased direct spending for those activities in later years. The changes in the deficit that are subject to pay-as-you-go procedures are shown in the following table.

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2017	2012–2022
NET INCREASE OR DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	1	2	2	-2	-2	-1	0	0	0	0	1	0

On August 5, 2011, CBO transmitted a cost estimate for S. 897, a bill to amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified states and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects and acid mine remediation programs, as ordered reported by the Senate Committee on Energy and Natural Resources on July 14, 2011. The two versions of the legislation are similar, and their estimated costs are the same over the 2012–2022 period; however, because we now assume that S. 897 will be enacted during fiscal year 2012, we estimate that implementing it would have no significant impact on direct spending until 2013.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that enacting S. 897 would have no significant net impact on the federal budget over the 2012–2022 period. Because enacting S. 897 could affect direct spending (increasing it in some years and decreasing it in others), pay-as-you-go procedures apply. Enacting S. 897 would not affect revenues.

S. 897 would allow uncertified states and tribes to use federal grant funds for other types of reclamation projects not related to coal mining. CBO expects that this change would increase direct spending—by up to \$2 million a year—in the near term by accel-

erating spending of reclamation grants. However, that short-term increase would be offset by reduced spending in later years. On balance, CBO expects that implementing the legislation would result in no net change in direct spending over the 2012–2022 period.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Surface Mining Control and Reclamation Act of 1977 to clarify that uncertified States and Indian tribes have the authority to use certain payments for certain noncoal reclamation projects and acid mine remediation programs.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates as defined under Public Law 104–4.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

* * * * *

TITLE IV—ABANDONED MINE RECLAMATION

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RECLAMATION FEE

SEC. 402. (a) * * *

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(g) ALLOCATION OF FUNDS.—(1) * * *

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(6)(A) Any State with an approved abandoned mine reclamation program pursuant to section 405 may receive and retain, without regard to the 3-year limitation referred to in paragraph (1)(D), up to 30 percent of the total of the grants made annually to the State under paragraphs (1) and (5) and section 411(h)(1) if those amounts are deposited into an acid mine drainage abatement and treatment fund established under State law, from which amounts (together with all interest earned on the amounts) are expended by the State

for the abatement of the causes and the treatment of the effects of acid mine drainage in a comprehensive manner within qualified hydrologic units affected by coal mining practices.

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FILLING VOIDS AND SEALING TUNNELS

SEC. 409. (a) * * *

(b) Funds available for use in carrying out the purpose of this section shall be limited to those funds which must be allocated to the respective States or Indian tribes under the provisions of paragraphs (1) and (5) of section 402(g) and section 411(h)(1).

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SEC. 411. CERTIFICATION.

(a) * * *

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(h) PAYMENTS TO STATES AND INDIAN TRIBES.—

(1) IN GENERAL.—

(A) * * *

* * * * *

(D) USE OF FUNDS.—

(i) * * *

(ii) UNCERTIFIED STATES AND INDIAN TRIBES.—A State or Indian tribe that has not made a certification under subsection (a) in which the Secretary has concurred shall use any amounts provided under this paragraph for the purposes described in [section 403] section 402(g)(6), 403, or 409.

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